

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Petition of the SBC Companies for Forbearance) CC Docket No. 98-227
from Regulation as a Dominant Carrier for High)
Capacity Dedicated Transport Services in Specified)
MSAs)

**COMMENTS OF
NETWORK ACCESS SOLUTIONS, INC.¹**

In its petition, SBC asks the Commission to relax in specific ways the regulatory controls that exist on its offering of "high capacity dedicated transport services" in 14 enumerated metropolitan areas in which SBC operates as the incumbent LEC. According to SBC, Section 10 of the Communications Act requires relaxed regulation of its high capacity dedicated transport services in these geographic areas. That provision requires reduced regulation of a particular service if the service is subject to substantial competition. SBC claims that its high capacity dedicated transport services in the enumerated geographic areas are subject to substantial competition.

NAS expresses no opinion on the question of whether existing competition justifies relaxed regulation of most types of high speed dedicated transport service. But for reasons discussed below, the Commission should make clear that existing competition does not justify

¹ Network Access Solutions, Inc. ("NAS") uses DSL technology to provide a high speed, point-to-point transmission service that permits end users to connect their computers either to the Internet or to local area computer networks.

reduced regulation of any access service employing DSL technology that is provided by a SBC LEC.

DISCUSSION

Although it may appear superficially that grant of SBC's petition would result in regulatory relief for only a narrow category of services since the company limits its request for relief solely to "high capacity dedicated transport service", this superficial appearance is deceiving given that SBC includes as a "dedicated transport service" any interstate "special access service" operating at a transmission speed of "DS1 and higher":

High capacity dedicated transport services are those special access services, switched access entrance facilities, and switched access direct trunked transport services that operate at DS1 and higher transmission speeds (e.g., DS1, DS3, OCN). High capacity dedicated transport services do not include switched access or special access dedicated transport at transmission speeds of DS0 and below.²

SBC LECs use DSL technology to provide a variety of interstate special access services that operate at a speed of DS1 or higher. One such service, for example, is Pacific Tel's new so-called "ADSL Service." That service employs DSL technology to provide an end user with a dedicated connection to the Internet.³

The doctrine of stare decisis bars the FCC from reducing regulation of any special access offering provided by a SBC LEC that employs DSL technology. That doctrine prohibits an

² Pet. at 1 n.2.

³ See Pac. Bell Tariff FCC No. 128, at §17.5. The Commission has held that Pac Tel's ADSL Service is "special access" service. *Bell Atl. Tel. Cos.* at ¶ 14, FCC 98-317, rel. Nov. 30, 1998. Moreover, the service is available at a downstream speed of DS1. Pac. Bell Tariff No. 128, *supra*, §17.5.5.

administrative agency from reversing an earlier order absent new facts justifying reversal. Just five months ago, the Commission declined to reduce regulatory controls over any DSL access service provided by a SBC LEC because SBC had failed to show that the DSL access market is subject to effective competition.⁴ The FCC's ruling came in response to a petition by SBC requesting deregulation of its DSL access services on grounds that the DSL access market is subject to effective competition. The doctrine of stare decisis prevents the Commission from reducing regulation of SBC LECs' special access services that employ DSL technology because, while SBC offers evidence in the present petition designed to show that other parts of the dedicated transport service market are competitive, the company does not even purport to offer new evidence that the DSL special access market is effectively competitive.

SBC's failure to offer evidence that the DSL special access market is competitive is not surprising since that market plainly is not yet competitive. Two years ago, no one provided access service using DSL technology in competition with BOC/GTE LECs. Today, NAS is one of only a small number of companies that competes with BOC/GTE LECs in this market, and substantially all of these competitors are start-ups. Moreover, none has any practical alternative than to rely on the BOC/GTE LECs with whom it competes in order to obtain the loops and OSS and collocation services that are indispensable to its provision of DSL access service.

While the FCC lacks authority to reduce regulation of any special access service offered by SBC LECs that employs DSL technology, the agency can provide SBC with regulatory relief for its DSL special access services by requiring each incumbent LEC, including the SBC

⁴ *Deployment of Wireline Service Offering Advanced Telecommunications Capability, Memo. Op. and Order*, 13 Comm. Reg. (P&F) 1, 21 (1998).

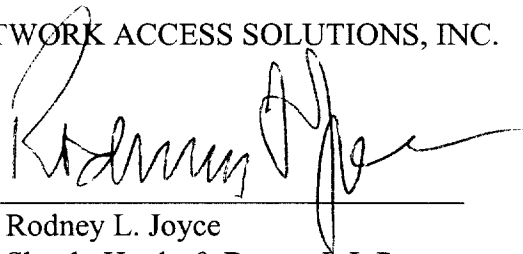
LECs, to offer any interstate service employing DSL technology through an affiliate of the sort that the agency has proposed in its Advanced Services rulemaking.⁵ Requiring SBC to provide such services on a deregulated basis through such an affiliate is in the public interest because it will provide SBC with the deregulation that it seeks and will help create an environment in which competition in the DSL access market can develop.⁶

CONCLUSION

While NAS expresses no opinion on the question of whether the FCC should reduce regulation of SBC's other high speed dedicated transport services, the agency should not reduce regulation of any interstate special access service employing DSL technology that is offered by a SBC LEC.

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⁵ *Id.*, Notice of Prop. Rulemaking, 13 Comm. Reg. at 23-27.

⁶ See NAS Comments at 4-6 (CC Dkt. No. 98-147, filed Sept. 25, 1998); NAS ex parte letter (CC Dkt. 98-147, dated Nov. 9, 1998).

CERTIFICATE OF SERVICE

I hereby certify that on January 13, 1999, a copy of the foregoing "Comments of Network Access Solutions, Inc." was served on each of the following:

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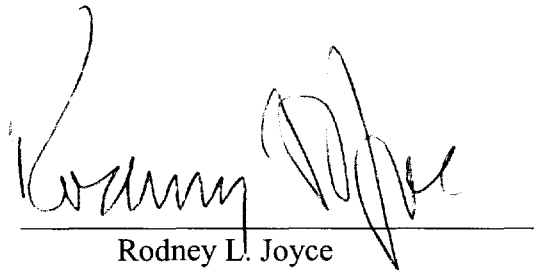
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